PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	
DETERMINATION OF ROYALTY RATES FOR DIGITAL PERFORMANCE IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS (WEB IV)	Docket No. 14-CRB-0001-WR (2016–2020)

iHEARTMEDIA'S OPPOSITION TO SOUNDEXCHANGE'S MOTION TO COMPEL iHEARTMEDIA TO PRODUCE DOCUMENTS IN REPONSE TO SOUNDEXCHANGE'S DOCUMENT REQUESTS AND RESPOND TO INTERROGATORIES

SoundExchange's Motion to Compel iHeartMedia to Produce Documents in Response to SoundExchange's Document Requests and Respond to Interrogatories (the "Motion") should be denied in its entirety.

First, there is no basis for SoundExchange's request for documents that iHeartMedia's experts may have looked at but did not rely upon in formulating their testimony or reference in that testimony. Because the Judge's rules do not expressly address document discovery with respect to experts, and because both the Judges and the parties have recognized that permissible discovery during this proceeding is far more limited than discovery in civil proceedings, the parties adopted two separate agreements to manage expert discovery. They agreed to make initial disclosures of materials that all witnesses, including experts, "relied upon," which the Judges adopted in their Discovery Schedule. And the parties also entered into an expert stipulation that prohibits further discovery of documents (though not analyses) that an expert merely considered, but did not reference or rely upon. Under the express terms of the parties'

agreed stipulation on expert discovery, iHeartMedia is not required to produce documents that its experts may have looked at but did not rely upon or reference in formulating their testimony.

SoundExchange is now seeking to renege on the expert stipulation for the first time, just weeks before the hearing is scheduled to begin. SoundExchange cites no authority in the Judges' rules for its position. Instead, it adopts an erroneous interpretation of the agreed expert stipulation that violates its plain language and would lead to absurd results. Moreover, SoundExchange provides no basis for why it supposedly needs the documents it seeks. SoundExchange does not need a list of documents iHeartMedia's experts might have considered for SoundExchange to depose or cross-examine iHeartMedia's experts – SoundExchange already has a list (and copies) of all documents iHeartMedia's experts referenced or relied upon, and is free to show each expert any other document to determine whether it was reviewed and, if so, why it was not relied upon, or, if not, whether it would affect that expert's opinion.

Second, iHeartMedia should not be required to produce additional documents relating to the development of its algorithm for selecting music for its listeners. iHeartMedia has already conducted a reasonable search for these documents and has produced documents that, among other things, explain in detail how its current song algorithm operates. The additional documents that SoundExchange seeks – describing earlier iterations of the current algorithm, and any e-mails discussing changes between these two iterations – are not directly related to the written rebuttal testimony of any iHeartMedia witness. SoundExchange claims these documents are necessary to test Professors Fischel's and Lichtman's rebuttal to SoundExchange's arguments that interactive and non-interactive services are converging. Although the documents at issue may relate to this testimony in the broadest sense, that relationship is extremely attenuated at best, not direct as the Judges' rules require.

Third, and finally, iHeartMedia should not be required to undertake substantial additional efforts to produce any additional documents created or maintained in the four months between the time iHeartMedia completed its initial productions in November 2014 and the present. For each of the five requests that are the subject of SoundExchange's Motion, iHeartMedia has either already made substantial efforts to locate *post*-October responsive documents and/or otherwise has a good-faith basis for believing that no additional non-privileged documents responsive to these requests are likely to exist. Moreover, SoundExchange has not demonstrated that this time window has any particular relevance with respect to the requests at issue such that any documents created very recently are not merely cumulative of documents that iHeartMedia has already produced. *See* 47 C.F.R. § 351(c)(2)(ii). Having failed to make such a showing, SoundExchange should not be permitted to impose a heavy burden on iHeartMedia to re-perform costly searches on the remote chance that a new series of searches will turn up documents substantively different than the massive production iHeartMedia has already made.

ARGUMENT

A. iHeartMedia Should Not Be Required to Produce Documents That Were Neither Relied Upon Nor Referenced By Its Experts[1]

iHeartMedia has produced all of the documents that its experts relied upon or referenced in their written rebuttal testimony. SoundExchange does not dispute this, but claims that, under the Stipulation of the Participants Regarding the Scope of Expert Discovery ("Expert Discovery Stipulation"), iHeartMedia is also required to produce documents that its experts "considered," even if those documents were neither referenced nor relied upon. SoundExchange is wrong.

[1] Section II.A of SoundExchange's Motion states that "iHeart[Media] Should Produce . . . Drafts of Reports Exchanged Between or Among Testifying Experts." The body of the Motion does not address draft expert reports, however, and SoundExchange has authorized iHeartMedia to state that SoundExchange is no longer seeking such drafts, which iHeartMedia therefore does not address in this response.

1. The Judges' rules do not expressly address document discovery with respect to experts. With respect to "document production" generally, the rules provide that "[a] participant in a royalty rate proceeding may request of an opposing participant nonprivileged documents that are directly related to the written direct statement or written rebuttal statement of that participants." 37 C.F.R. § 351.5(b). Further, with respect to the "introduction of studies and analyses," the rules provide that "[t]he facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered," and that "[s]ummarized descriptions of input data, tabulations of input data and the input data themselves should be retained." *Id.* § 351.10(e). Thus, as SoundExchange has stated in this proceeding, "the regulations make clear, and the Judges have repeatedly reminded participants, discovery in these proceedings is far more limited than discovery in civil proceedings," including with respect to expert discovery. SoundExchange's Opposition to iHeartMedia's Motion to Compel SoundExchange To Produce Documents in Response to Discovery Requests, at 13 (filed Nov. 21, 2014).

Recognizing the limitations on permissible discovery as well as the practical constraints of a compressed proceeding, the parties have adopted two separate agreements that bear on expert discovery. They adopted a joint discovery schedule that provided for the disclosures of all documents that all witnesses, including experts, "relied upon." Joint Motion for Issuance of Discovery Schedule and Alteration of Case Schedule, at 3 (filed July 29, 2014). Pursuant to this agreement, iHeartMedia – at both the direct and rebuttal testimony phases – has provided SoundExchange with all documents on which its experts relied or that were referenced in their written testimony.

In addition, the parties entered into the Expert Discovery Stipulation, which prohibits further discovery of documents (though not analyses) that an expert merely considered, but did not reference or rely upon. Paragraph 1 of the Expert Discovery Stipulation creates a general rule that parties need not produce various communications, drafts of testimony, and other materials reflecting communications between counsel and the party's expert. (Attached as Ex. 1 to Ehler Decl.) Paragraph 2 creates an exception to that general rule for "documents, communications and other materials that an expert ***references or relies upon*** in formulating his or her opinion or expert report." (Emphasis added). Paragraph 3 creates an additional exception, permitting parties to inquire "into the basis of any opinion expressed by an expert," including "documents prepared in furtherance of an expert report" and "drafts of expert reports that were shared with any other testifying expert that were relied on by that other expert." Paragraph 4 limits both preceding exceptions, providing that "[n]othing in paragraphs 2 or 3 above will permit inquiry into or discovery of drafts or communications between experts and counsel or communications between experts that were ***considered but not referenced or relied upon***." (Emphasis added).[2]

2. Under the plain terms of the Expert Discovery Stipulation, documents that an expert merely considers – that is, documents the expert may look at, but does not rely upon in formulating his or her testimony or reference in that testimony – are shielded from discovery. Although SoundExchange argues that iHeartMedia should nonetheless be required to identify and produce all documents that its experts "considered," it provides no basis in the Judges' rules

[2] In recognition of the compressed nature of the proceeding here, this provision is purposefully narrower than the comparable provision of the Federal Rules of Civil Procedure, which permits discovery of an attorney's communications with an expert that "identify facts or data that the party's attorney provided and that the expert *considered* in forming the opinions to be expressed." Fed. R. Civ. P. 26(b)(4)(C)(ii) (emphasis added).

or the Expert Discovery Stipulation for such a requirement. SoundExchange instead argues (at 4) that "[t]he parties have not interpreted the Agreement to bar a party from seeking documents that an expert considered but did not rely upon." But SoundExchange is unable even to identify which language in the Expert Discovery Stipulation it believes the parties have interpreted in this manner.[3] Nor has SoundExchange previously raised this issue with respect to discovery regarding the written direct statements of iHeartMedia's experts, where iHeartMedia followed the same approach as it has with its experts' written rebuttal statements. In any event, that other parties might have adopted a different interpretation of the agreement in making their productions does not permit SoundExchange to change the plain terms of the parties' Expert Discovery Stipulation, which clearly excludes from discovery materials merely considered by iHeartMedia's experts.

Unable to demonstrate that the Stipulation permits discovery of documents an expert merely looked at, SoundExchange is left to argue that there is no distinction between documents an expert "considered" and those the expert "referenced." It faults (at 5) iHeartMedia for taking "the view that 'referenced' in the [Expert Discovery Stipulation] means 'explicitly mentioned,'" which SoundExchange claims improperly conflates the meaning of "referenced" and "relied upon," because "if a document is specifically mentioned, it is relied upon." SoundExchange is wrong.

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[3] Discussing Paragraph 3, SoundExchange states, without any evidence, (at 5) that "the parties understood that a document the expert ***referred to*** in preparing his or her opinions would be within the scope of discovery." But this language appears *nowhere* in Paragraph 3 or the Expert Discovery Stipulation more generally, and it thus provides no support for SoundExchange's interpretation. Instead, the relevant question is what the term "references" in Paragraph 2 means and whether it can be read so broadly as to include documents merely "considered by" an expert, as requested by SoundExchange's document requests. As discussed further below, the Stipulation could not be clearer that documents that an expert "references" in his or her report are distinct from documents the expert merely "considered" but did not reference or rely upon, and the latter category of documents is not discoverable.

First, it is nonsensical for SoundExchange to dispute that "referenced" means something other than "explicitly mentioned." That is the plain meaning of the term in this context. *See, e.g.*, Merriam-Webster's Collegiate Dictionary 1045 (11th ed. 2003) (defining "reference" as "to supply with references" or "to cite in or as a reference").

Second, contrary to SoundExchange's narrow view (at 5), iHeartMedia's interpretation preserves the distinction between "referenced" and "relied upon." It is easy to envision documents that an expert may reference in his or her written statement without relying on them. For example, an expert may cite in his or her testimony the documents or other materials on which an opposing expert relies or other case materials that the expert finds unpersuasive or unreliable; in that case, the expert has referenced the documents but plainly has done so without relying upon them. By contrast, SoundExchange's view conflates "referenced" and "considered" and leads to absurd results. For example, if an expert looked at a book on his or her shelf while developing his or her testimony but found nothing useful in that book, under SoundExchange's view the expert would still be required to disclose that as a "referenced" source. This would create an absurd discovery standard, and one that is not contemplated by the limited discovery agreed upon by the parties in the Expert Discovery Stipulation.

Third, the plain terms of the Expert Discovery Stipulation directly refute SoundExchange's view that "considered" and "referenced" should be given the same meaning. Paragraph 2 of the Expert Discovery Stipulation permits discovery of "analyses performed ***or considered*** by an expert in connection with the development or formulation of his or her opinion or expert report." Paragraph 3 of the Expert Discovery Stipulation permits discovery that "may include questioning an expert as to analyses, theories, models, and any other matters that an expert ***considered*** but ultimately rejected," even where the expert did not reference or rely on

such materials. In both cases, the Stipulation recognizes that, where an expert takes the step of performing an analysis that he or she ultimately decides to ignore, discovery into that analysis is proper to determine the basis for such rejection. But in neither case does the Expert Discovery Stipulation permit discovery of *documents* that an expert merely considered (that is, looked at), but which do not comprise any *analyses* that the expert considered or performed. SoundExchange's Motion improperly seeks that category of materials – documents "considered" – even though that category is *not* authorized, and SoundExchange's request is in violation of the plain terms of the parties' Expert Discovery Stipulation.

Similarly, another paragraph of the Expert Discovery Stipulation uses both the term "considered" and the term "referenced or relied upon" and makes abundantly clear that, again, "consider" must have a meaning different from "reference." Paragraph 4 states that "[n]othing in paragraphs 2 or 3 above will permit inquiry into or discovery of drafts or communications between experts and counsel or communications between experts that were considered but not referenced or relied upon." If SoundExchange were correct that Paragraph 2's use of "references" permitted discovery into documents that an expert merely "considers," Paragraph 4's distinction between those two categories of documents would be nonsensical, because it permits discovery into drafts "referenced" but does *not* permit discovery into drafts merely "considered."

3. Finally, SoundExchange's Motion should be rejected because it also fails to provide any basis – much less a compelling one – to order the discovery it seeks. As iHeartMedia informed SoundExchange, all documents iHeartMedia's experts referenced or relied upon have been identified (and produced). Nothing more is required of iHeartMedia or its experts. SoundExchange has every opportunity – in a deposition or during the hearing – to show

iHeartMedia's experts whatever materials SoundExchange believes the experts should have considered to determine whether the experts did consider them and, if so, why they did not reference or rely upon them in their testimony.

B. iHeartMedia Should Not Be Required to Produce Additional Documents Relating to the Development of Its Algorithm for Selecting Music for Its Listeners

SoundExchange's Document Request No. 21 sought documents regarding "how iHeart[Media] selects or has selected in the past the songs performed for listeners on its customized streaming service," including "analysis or discussions regarding how iHeartMedia selects the first song and subsequent songs, how its selection process has changed over time, or any proposed changes to this selection process." In response, iHeartMedia produced documents sufficient to show how iHeartMedia's current song algorithm, known as [[ ]], operates. SoundExchange argues (at 7) it is also "entitled to documents related to [[ ]] Algorithm and any other algorithms as well as communications in the custodial files of its witnesses or other relevant personnel at iHeart[Media] regarding the decisions as to whether, how, and in what direction to evolve its custom radio offering." But these additional documents are not even remotely related to the rebuttal testimony of any iHeartMedia witness, much less directly related as the Judges' rules require.

SoundExchange argues (at 7) that "[t]he requested documents are directly related to iHeart[Media]'s written rebuttal testimony and necessary to explore the veracity of claims made by Profs. Fischel and Lichtman," who dispute SoundExchange's claims that interactive and non-interactive services are "converging." This argument misses the point entirely. Professors Fischel and Lichtman say nothing whatsoever in their testimony about iHeartMedia's song-selection algorithm. Indeed, their testimony does not contain any specific discussion of the iHeartRadio service at all. They instead describe other functional differences between

interactive and non-interactive services generally: "that interactive services offer on-demand functionality, while non-interactive services do not," Fischel & Lichtman WRT ¶ 11; that "[i]nteractive services are far more commonly sold to consumers through subscriptions, whereas almost all non-interactive listening is ad-supported," *id.* ¶ 12; and that "at least one important type of non-interactive service, simulcast, combines music with complementary content, such as DJ discussion, weather, and news," *id.* ¶ 13. Nowhere do Professors Fischel and Lichtman address functional differences between the services that would be relevant to the song-selection algorithm that iHeartMedia uses, such as the size and nature of the playlists available on these services. As a result, SoundExchange's request could not possibly be viewed as "directly related" to their testimony.

SoundExchange argues (at 7) that "[d]ocuments regarding the evolution (or contemplated evolution) of iHeart[Media]'s custom service could show that consumers *do* treat interactive and non-interactive services as substitutes, in particular if changes in iHeart[Media]'s song selection strategy have been designed to better capture on-demand users." But the mere fact that Professors Fischel and Lichtman dispute SoundExchange's claims of convergence and conclude that consumers *do not* view interactive and non-interactive services as substitutes, does not somehow open the door for SoundExchange to fish for every conceivable document that involves this extremely broad and amorphous subject area. SoundExchange's contrary argument draws no distinction between a document merely related to testimony and documents *directly* related to testimony. Under SoundExchange's expansive view of relevance and discovery, any document that discusses any past, present, or future capabilities of any webcasting service would arguably be related to "convergence," regardless of whether any witness discussed that particular capability.

Moreover, SoundExchange's focus (at 7-8) on whether "iHeart[Media]'s song selection criteria has evolved over time," and "[d]ocuments concerning *why* iHeart[Media] decided to change its algorithm" including internal communications on this subject, are particularly far afield from Professors Fischel and Lichtman's rebuttal testimony. Their testimony focuses solely on the current capabilities of services in the marketplace generally. Even though they do not discuss the iHeartRadio service specifically, with the documents that iHeartMedia has produced regarding the current version of its song-selection algorithm, SoundExchange can test Professors Fischel and Lichtman's assertions as to whether the existing iHeartRadio service contains functionality that renders this service comparable to an interactive service. Whether earlier versions of the service – which are outside of the statutory rate period – are more or less interactive than the current service is irrelevant to the issues in this proceeding, and not remotely related – let alone "directly" related – to iHeartMedia's rebuttal testimony.

C. iHeartMedia Has Complied with Its Obligations To Produce Documents Responsive to Requests 24, 30, 31, 35, and 38

SoundExchange contends (at 2) that iHeartMedia "has refused to produce documents in response to several document requests [Nos. 24, 30, 31, 35, and 38] on the ground that it produced some documents responsive to these requests during the direct-phase of discovery." Although iHeartMedia has produced extensive documents responsive to each of these requests – a fact SoundExchange does not dispute – SoundExchange complains (at 10) that iHeartMedia has not updated all of its prior searches to locate documents "created by or otherwise in iHeart[Media]'s possession, custody and/or control between October 7, 2014 and the filing of written rebuttal statements." But SoundExchange has failed to demonstrate that any documents created or maintained during this five-month window are likely to be directly related to

iHeartMedia's written rebuttal statements, much less that the enormous burden of searching for such documents would outweigh any limited benefit that such documents would provide.

As an initial matter, SoundExchange's Motion highlights the very different approaches to discovery that iHeartMedia and SoundExchange have taken in this proceeding. iHeartMedia has undertaken a massive effort to search for and produce extensive discovery directly related to both its direct and rebuttal witness statements. To date, it has produced nearly 24,000 documents totaling more than 86,000 pages, and has produced an additional nearly 4000 documents in native format. Moreover, iHeartMedia produced the overwhelming majority of these documents in a timely manner, including during the direct phase of discovery, such that all parties would have adequate time to review and utilize any relevant materials. SoundExchange, in stark contrast, has produced the bulk of its documents only after resisting production and by order of the Judges, and has continued to roll out documents even while depositions are ongoing or after depositions of witnesses have already been taken. Since March 19, 2015, alone, for example, SoundExchange has produced nearly 19,000 documents representing approximately 53 percent of its total production in this case. iHeartMedia should not be punished or disadvantaged for having taken its discovery efforts seriously since the inception of this proceeding, which would be the practical effect of granting SoundExchange's Motion.

In any event, SoundExchange's Motion fails for multiple reasons. First, it is premised on incomplete or inaccurate facts. For each of the five document requests at issue, iHeartMedia has either made substantial efforts to locate *post*-October responsive documents and/or otherwise has

a good-faith basis for believing that no additional non-privileged documents responsive to these requests are likely to exist,[4] as follows:

- **Request No. 24 (advertising on iHeartRadio's custom streaming or simulcast streaming services)**: In March 2015, iHeartMedia searched relevant custodians' files for responsive documents but did not locate any that had not already been produced.
- **Request No. 30 (surveys analyzing terrestrial or digital radio)**: iHeartMedia has produced all surveys responsive to this Request, including the Artist Integration Program survey referenced in Tom Poleman's written rebuttal testimony. No other responsive, non-privileged documents exist that are underlying these surveys.
- **Request No. 31 (AIP/DAIP)**: iHeartMedia performed an exhaustive search for documents responsive to this Request in October 2014, and all responsive documents were dated November 2013 or earlier. Therefore, iHeartMedia has a good-faith basis to believe that no new documents exist that are responsive to this Request, and there is therefore no reason to require iHeartMedia to perform additional searches without a reasonable basis to believe that any new, additional relevant or responsive materials exist.
- **Request No. 35 (financial records)**: As iHeartMedia has already explained to SoundExchange during the meet-and-confer process, iHeartMedia does not maintain in the ordinary course of business financial documents that "show the amount of revenues earned by iHeartMedia directly from simulcasting, terrestrial radio, and custom radio." Searching for such documents would be futile. iHeartMedia has already produced the most recent financial documents maintained in the ordinary course of business.
- **Request No. 38 (promotional effect of radio)**: iHeartMedia searched for new documents responsive to this Request in March 2015 and has produced some such documents that were not privileged. *See, e.g.*, IHM_0078787; IHM_0078791; IHM_0078793; IHM_0078795; IHM_0078797. Based on its recent efforts, iHeartMedia has a good-faith basis to believe no further non-privileged documents exist that are responsive to this Request.

Further, SoundExchange has failed to demonstrate that the documents it seeks are directly related to written rebuttal testimony. SoundExchange claims (at 8) that iHeartMedia "has expressed no objection to the production of documents responsive to the [five] requests on the grounds that they are not directly related to the WRS" and that iHeartMedia "essentially concedes that point." In fact, iHeartMedia objected to all of SoundExchange's requests "to the extent they seek documents that are not directly related to iHeartMedia's written direct or written

[4] The Judges have held that they will not look behind a party's averment that certain documents do not exist, *see* Discovery Order No. 9, at 6; that principle applies here.

rebuttal statements," and it incorporated that objection "into each and every response." *See* iHeartMedia's Resps. & Objs. to SoundExchange's Third Reqs. for Prod. of Docs. ¶¶ 5, 12 (attached as Ex. 5 to Ehler Decl.). Moreover, the question here is not whether there are any documents that SoundExchange seeks that are directly related to written rebuttal testimony, because iHeartMedia has already produced extensive documents in response to each request. Rather, the question is whether the additional documents created or maintained in the five-month window at issue are directly related. SoundExchange does not even attempt to make such a showing, nor could it.[5] As explained above, iHeartMedia has determined following a reasonable inquiry that there were no responsive documents created or maintained in this window or that a search for such documents was likely to be futile given the nature of the request and iHeartMedia's prior discovery efforts.

Finally, SoundExchange's Motion should be rejected because the burden of ordering iHeartMedia to re-do its prior searches for documents that cover a five-month period that is of no special relevance to any of the requests at issue far outweighs any potential gain.[6] iHeartMedia does not maintain a central repository of e-mails or other files, and it would therefore be required to re-perform costly and burdensome searches of employees' files. The "potential impact of the requested information," *see* Discovery Order No. 1, at 3, when adjusted for the marginal

[5] Even with respect to the broader question whether SoundExchange's requests are directly related to written rebuttal testimony, SoundExchange's Motion falls well short. In a series of footnotes, one for each request, SoundExchange asserts that its requests are directly related to testimony because both the request and the testimony discuss the same broad subject areas. But SoundExchange has done nothing more than establish that its requests are, at most, merely related to iHeartMedia's testimony; it has not established a direct relationship, as the rules require. *See* 37 C.F.R. § 351.5(b); *accord* 17 U.S.C. § 803(b)(6)(C)(v).

[6] *See, e.g.*, Order Granting in Part and Denying in Part SoundExchange's Motion To Compel Sirius and XM To Produce Certain Content Deals, Negotiating Documents, and Internal Analyses of Content Deals, at 3, Docket No. 2006-1 CRB DSTRA (May 18, 2007) (granting request where "documents are directly related to testimony" and not "overly burdensome" but denying request that is "overbroad and burdensome").

probability of locating additional information, approaches zero. Therefore, requiring additional search efforts would impose an undue and disproportionate burden on iHeartMedia.

CONCLUSION

For the foregoing reasons, SoundExchange's Motion should be denied in its entirety.

Dated: April 1, 2015

Respectfully submitted,

iHEARTMEDIA, INC.

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CERTIFICATE OF SERVICE

I, Evan T. Leo, hereby certify that a copy of the foregoing PUBLIC version of the (i) iHeartMedia's Opposition to SoundExchange's Motion to Compel iHeartMedia to Produce Documents in Response to SoundExchange's Document Requests and Respond to Interrogatories; (ii) Redaction Log; (iii) Declaration of Evan T. Leo have been served on this 1st day of April 2015 on the following persons:

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Washington, D.C.

In the Matter of	)	
DETERMINATION OF ROYALTY RATES FOR DIGITAL PERFORMANCE IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS (WEB IV)	)	**Docket No. 14-CRB-0001-WR (2016-2020)**

DECLARATION AND CERTIFICATION OF EVAN T. LEO ON BEHALF OF iHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. ("iHeartMedia") in this proceeding, and I submit this Declaration in support of the restricted version of the iHeartMedia's Opposition to SoundExchange's Motion to Compel iHeartMedia to Produce Documents in Response to SoundExchange's Document Requests and Respond to Interrogatories.

2. On October 10, 2014, the CRB adopted a Protective Order that limits the disclosure of materials and information marked "RESTRICTED" to outside counsel of record in this proceeding and certain other parties described in subsection IV.B of the Protective Order. *See* Protective Order (Oct. 10, 2014). The Protective Order defines "confidential" information that may be labeled as "RESTRICTED" as "information that is commercial or financial information that the Producing Party has reasonably determined in good faith would, if disclosed, either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future." *Id.* The Protective Order further requires that any party producing such confidential information must "deliver with all Restricted materials an affidavit

or declaration . . . listing a description of all materials marked with the 'Restricted' stamp and the basis for the designation." *Id.*

3. I submit this declaration describing the materials iHeartMedia has designated "RESTRICTED" and the basis for those designations, in compliance with Sections IV.A of the Protective Order. I have determined to the best of my knowledge, information and belief that the materials described below, which are being produced to outside counsel of record in this proceeding, contain confidential information.

4. The confidential information comprises or relates to business strategy that is proprietary, not available to the public, and commercially sensitive.

5. If the confidential information were to become public, it would place iHeartMedia at a commercial and competitive disadvantage; unfairly advantage other parties to the detriment of iHeartMedia; and jeopardize iHeartMedia's business interests.

6. The information described above must be treated as restricted confidential information in order to prevent business and competitive harm that would result from the disclosure of such information.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that the foregoing is true and correct.

April 1, 2015

Respectfully submitted,

/s/ Evan T. Leo

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Counsel for iHeartMedia, Inc.

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
DETERMINATION OF ROYALTY RATES FOR DIGITAL PERFORMANCE IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS (WEB IV)	)	**Docket No. 14-CRB-0001-WR (2016-2020)**

REDACTION LOG FOR iHEARTMEDIA'S OPPOSITION TO SOUNDEXCHANGE'S MOTION TO COMPEL iHEARTMEDIA TO PRODUCE DOCUMENTS IN RESPONSE TO SOUNDEXCHANGE'S DOCUMENT REQUESTS AND RESPOND TO INTERROGATORIES

iHeartMedia hereby submits the following list of redactions from the Opposition to SoundExchange's Motion to Compel iHeartMedia to Produce Documents in Response to SoundExchange's Document Requests and Respond to Interrogatories filed April 1, 2015, and the undersigned certifies, in compliance with 37 C.F.R. § 350.4(e)(1), and based on the Declaration of Evan T. Leo submitted herewith, that the listed redacted materials are properly designated confidential and "RESTRICTED."

Document	Page/Paragraph/ Exhibit No.	General Description
Opposition to SoundExchange's Motion to Compel iHeartMedia to Produce Document in Response to SoundExchange's Document Requests and Respond to Interrogatories	p. 9, para. 2, lines 6, 7	Proprietary business information that is competitively sensitive.

April 1, 2015

Respectfully submitted,

/s/ Evan T. Leo

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